IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2001 of 2006

Noor Banoo Adi Baliwalla ...Petitioner.

Versus

State of Maharashtra
and Anr. ...Respondents.

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Mr.Sanjog Parab, Advocate for the Petitioner.
Ms.S.V.Gajare, APP, for State.
Mr.Pankaj Das, Advocate for Respondent No.2.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 20th February, 2007.

P.C.:

1. Heard Mr.Parab the learned Advocate for the petitioner-orig.complainant, Mr.Das, the learned Advocate for respondent No.2-orig.accused and Ms.Gajare, the learned APP for the State.

2. The petitioner-orig.complainant has filed a complaint against respondent No.2-orig.accused under Sections 420, 406 & 380 of IPC. The said complaint is pending before the learned Metropolitan Magistrate, 18th Court, Girgaum, Mumbai. In the said case, the prosecution had

preferred an application before the learned Magistrate to lead additional evidence. The said application came to be rejected by order dated 23.04.2004. The said order was not challenged by the prosecution.

3. Thereafter, on 07.05.2004 the petitioner-orig.complainant on coming to know about order dated 23.04.2004 whereby the application for leading additional evidence was rejected, preferred a separate application for leading additional evidence. The said application came to be rejected by the learned Magistrate by order dated 24.08.2004 on the ground that it was a second application with the same prayer.

4. Being aggrieved thereby, the petitioner-orig.complainant preferred revision before the Sessions Court which came to be dismissed by order dated 17.05.2006. The ground for rejecting the revision was that the application for leading additional evidence was earlier rejected by the Magistrate by order dated 23.04.2004 and the second application could not have been preferred without challenging the first

order dated 23.04.2004. It is only on this ground that the said revision came to be dismissed.

5. It is seen that the first application was preferred by the prosecutor who was conducting the matter. However, when the application came to be rejected, the learned prosecutor did not give any opinion about challenging the same before the higher forum. However, on the complainant coming to know about this fact, she has preferred a separate application and the said application came to be rejected on the sole ground that the first order dated 23.04.2004 was not challenged and the application preferred by the complainant was a second application made with the same prayer. In the present case, this Court has asked the learned APP to find out whether they intend to challenge the order dated 23.04.2004. The learned APP stated on instructions that the said order dated 23.04.2004 was earlier not challenged as the concerned prosecutor did not give any opinion that the order ought to be challenged. She further stated that now also the State does not intend to challenge that order as the concerned prosecutor who conducted the matter on 23.04.2004 has not

sent his opinion regarding challenging the said order. The stand taken by the State reflects a very sorry state of affairs.

6. Mr.Parab the learned Advocate for the petitioner has placed reliance on the decision of the Supreme Court in the case of **M/s.J.K.International Vs. State, Govt. of NCT of Delhi & Ors., AIR 2001 SC 1142**. The said case was under Section 302 of IPC. In the said case, the Supreme Court has held that an aggrieved person cannot altogether be eclipsed from the scenario and he has right to be heard.

7. In the present case, it is seen that as soon as the complainant came to know about order dated 23.04.2004, without wasting any time she has preferred a separate application for leading additional evidence. In my opinion, in the interest of justice the application preferred by the petitioner-orig.complainant ought to be considered on merits. The complainant should not be made to suffer for no fault on her part. Just because the prosecutor who conducted the matter on 23.04.2004 was lax in sending his opinion, it

should not cause injustice to the complainant. Hence, I am inclined to set-aside orders dated 23.04.2004, 24.8.2004 passed by the learned Magistrate and 17.05.2006 passed by the learned Sessions Judge.

8. In this view of the matter, the orders dated 23.04.2004, 24.8.2004 and 17.05.2006 are set aside. The learned trial Court to consider the application made by the complainant on merits and dispose it of as expeditiously as possible after hearing necessary parties.

9. Writ Petition is disposed of accordingly.

(SMT.V.K.TAHILRAMANI,J.)